



Generally Speaking

Comings and Goings

Judy Bockmon joined the Opinions, Appeals and Ethics section as an assistant attorney general on May 1. She came to the department from the Anchorage office of Robertson, Monagle & Eastaugh.

Alice Bodnar began her summer internship with the Environmental section in Anchorage on May 30.

AAG **Laura Bowen** from the Child Protection section transferred to the Collections & Support section effective May 4.

AAG **Blair Christensen** transferred from the Human Services section to OSPA on May 22.

AAG **Stan Fields** left the department May 12. Stan has entered private practice with the Juneau law firm of Baxter Bruce & Sullivan P.C.

Thomas Jantunen, a third year law student at Denver University, joined the Torts section for a summer internship. He is an “old hand” in Alaska, having attended UAA as an undergraduate.

Special Assistant **Vanessa Lamantia** accepted an assistant attorney general position in the Juneau Natural Resources section.

Executive Secretary **Valerie Robinson** transferred from the Attorney General’s Office to the Criminal Division Central Office.

IN THIS ISSUE

Comings and Goings	1
Civil Division	2
Child Protection.....	2
Commercial/Fair Business....	4
Environmental	5
Human Services	7
Labor and State Affairs.....	8
Legislation/Regulations	10
Natural Resources	10
Oil, Gas and Mining.....	12
Opinions, Appeals, Ethics...	13
RAPA	17
Torts/Workers’ Comp	18
Transportation.....	19
Criminal Division	21
Anchorage DAO	21
Fairbanks DAO	23
Kenai DAO	24
Ketchikan DAO	25
Kodiak DAO	25
Palmer DAO	26

CIVIL DIVISION

Child Protection

Light of Hope Award. Susan Wibker received a 2006 Light of Hope award at a ceremony at the Hotel Captain Cook before a crowd of almost 400 people involved in the child protection system in the Anchorage area. She was one of 20 award recipients. Susan was recognized for her exemplary work handling some of the most serious child abuse and neglect cases. The presenter noted that Susan is an extremely thorough and well-prepared attorney and a formidable opponent to the attorneys who represent the parents in contested CINA cases. Susan definitely deserved this award. She sets a high standard for herself and is a great role model for the attorneys in our office.

Darin Goff also received a nomination for an award. He was nominated by a social worker who noted that he hit the ground running when he began working in the Child Protection section. They appreciated his confidence, professionalism and fairness and his direct, sound advice. They also said he was a great morale booster, using his unique sense of humor to take the edge off very tense and stressful situations.

CINA Cases

Several CINA cases this month centered on newborns with parents who were unable to care for them because of substance abuse problems.

Twins were born to a woman who had an extensive history with OCS. Her parental rights to other children had been terminated because of her substance abuse and domestic violence issues. Within a few days after the children's discharge from Neonatal Intensive Care, the mother became intoxicated and hit the father in the face with a beer bottle. OCS took custody of the children because of the mother's ongoing substance abuse and violence issues and the father's unavailability to care for the children.

In another case, a child was born positive for cocaine. At a prenatal doctor's visit the mother had tested positive for cocaine. OCS had previous contact with this family as a result of the parents' substance abuse issues. The mother agreed to have the child live with the child's grandmother while she seeks additional treatment.

A mother gave birth to a child who was 23 weeks premature. The child died shortly thereafter. At the hospital, the mother tested positive for cocaine and amphetamines. Earlier in the year, OCS had a report that her older child had ingested Ecstasy, causing hospitalization. As a result of the mother's substance abuse issues and inability to protect her child from drugs, the older child was taken into custody.

A pregnant woman went to Providence obstetrics due to pre-term labor. The mother was noncompliant with medical recommendations by frequently getting up to smoke. The child was born and

admitted to the NICU. The child has Down Syndrome and other medical problems requiring extensive care. The parents have smelled of alcohol while at the hospital with the baby. Other reports alleged the mother used crack cocaine daily throughout her pregnancy. OCS had an extensive history with this mother involving her substance abuse and neglect of her five other children. The current situation demands additional OCS action.

In some other cases the mother's mental health and its impact on the children led OCS to take the children into custody.

A mother and two children were in Anchorage to get medical care for one of the children. While at the hospital, the children brought their mother to the psychiatric emergency department because she was having an emotional breakdown. The mother was intoxicated. The mother remained at the hospital overnight and the children were placed in foster care. The children were returned to the mother's care after a care and safety plan was set in place and agreed to by the parents. The mother agreed not to use alcohol or illegal substances. Three days later the children were placed in foster care again. The mother was intoxicated and suicidal while in the hospital with her children. She was again taken to the psychiatric department. Her blood alcohol content was four times over the legal limit.

Another mother was seen at a counseling center with high anxiety and depression. The agency referred the mother to Alaska Psychiatric Institute. Because there were no relatives or friends able to care for the child, OCS took custody. OCS had had previous contacts and interventions with this mother.

Other cases included a child who reported that her father smoked crack cocaine. She also reported that her father bit her fingers. The fourth digit of each of her hands was flattened, scarred, and misshapen as a result of her father's bites. The father acknowledged biting her fingers and said it was a habit he could not explain. The child also had a bruise on her forearm from a bite from her father. The father also allowed a violent individual and a person with an extensive criminal history of assault and substance abuse to come to the home. OCS had a substantial child protective history with this family stemming back to 1992.

In another case, a mother acknowledged that for the last two years she has left her nine-year-old child home alone at night while she worked. The home did not have a phone. She refused to change her schedule so she could be home with the child in the evenings.

OCS took two children into custody after receiving reports of methamphetamine use in the home. Both parents had been charged with delivery and possession of

methamphetamine. Hair testing of the children showed that the infant had amphetamines and methamphetamines in her system, in a level comparable to a "user." The older child's head had recently been shaved, so other testing is being conducted on him.

Commercial and Fair Business

Consumer Protection/Anti-Trust

Alaska Joins Other States In Letter to DOJ and FTC re Gasoline Pricing. On April 25, 2006, U.S. Attorney General Alberto Gonzales and Federal Trade Commission Chair Deborah Platt Majoras sent a letter to all state AG's regarding the high cost of gasoline in the U.S. The letter urged the states to work with the FTC and DOJ to enforce state laws against "anticompetitive and anticonsumer" conduct in the petroleum industry.

On May 2, 2006, Alaska Attorney General Dave Márquez joined 47 other state AG's in a response to the FTC and DOJ, reaffirming that the states stand ready to work with the federal agencies to determine the facts relating to high gasoline prices and identify meaningful solutions.

Gasoline prices in most of Alaska have tracked national trends. A recent study released by the FTC concluded there is no evidence of illegal conduct among petroleum producers to artificially increase the price of fuel. The FTC cited normal supply and demand market conditions, including the

increasing world demand for energy, as the primary cause of higher fuel prices.

Department of Revenue, Division of Gaming

In consultation with this office, the Alaska Department of Revenue revoked the pull tab operator's license of George Wright, who sold pull tab games for 35 charitable gaming permit holders in Anchorage. His license was revoked because he failed to pay his permit holders over \$540,000 in gaming proceeds to which they were entitled by law.

On May 19th, the Attorney General filed suit against Mr. Wright to force him to disgorge the gaming proceeds that should have gone to the charitable gaming permit holders. The Attorney General has motioned the court for a writ of prejudgment attachment to help ensure that there will be assets against which the state can enforce any judgment received in the case. AAG Dan Branch represents the state in this case.

Division of Insurance

Division of Insurance Investigation Results in Felony Conviction.

Mr. William Lewis pled no contest to theft in the second degree, a felony, on May 12, 2006. This conviction arose out of a division of insurance investigation of a report from Republic Indemnity that Mr. Lewis was fraudulently collecting workers compensation disability payments.

The insurance company's report documented through video surveillance that Mr. Lewis was able to perform or engage in physical activities that he claimed he was unable to do because of a work related injury. Mr. Lewis also gave sworn deposition testimony, making numerous false statements regarding his physical condition.

Through his fraudulent actions, Mr. Lewis collected \$45,104.92 in workers compensation payments for his alleged disabilities. Based on the division's investigative report AAG Maurice McClure drafted the initial complaint alleging counts of fraud and perjury. Subsequently, AAG Dan Wilkerson took over the prosecution of division of insurance cases and successfully negotiated a felony conviction to resolve the case. The insurer, Republic Indemnity, told the division investigator that a company referral had never before resulted in a criminal conviction.

Division of Corporations, Business and Professional Licensing

The State has filed its opening brief in its appeal before the Alaska Supreme Court of a certified nurse aide licensing case. The superior court held that a criminal conviction that had been set aside was not a conviction under the Board of Nursing licensing statutes and reversed the board's decision to deny licensure to the applicant based on her set aside convictions for felony forgery and theft.

The State argued before the superior court that, since the Alaska Supreme Court has held that there is no provision for either the expungement or sealing of criminal convictions that have been set aside pursuant to a suspended imposition of sentence, the convictions are part of a person's criminal record and available for the board to consider.

Other Alaska Supreme Court cases have held that set aside convictions are available for employers and that applicants may be required to disclose them. In *Spenard Action Comm. v. Lot 3, Block 1, Evergreen Subdivision*, 902 P.2d 766 (Alaska 1995) the court specifically held that a set aside conviction may be used for certain purposes in future proceedings.

The superior court did not follow this precedent. The decision in this case will affect numerous boards and commissions that have statutory authority to deny licensure based on criminal convictions. The brief was filed by AAG Dave Brower, with a lot of help from Chief AAG Jan De Young, Chief AAG Signe Andersen, and AAG Gayle Horetski.

Environmental

Sam and Joyce McDowell v. State. Senior AAG Breck Tostevin settled this long-running litigation brought in 1993 by the McDowells against DEC, Tesoro and the Cooks as a result of gasoline contamination from the Cook's Sterling Tesoro service station. The case has been to the Alaska Supreme Court

several times and was finally resolved by the McDowells' court-appointed conservators.

The McDowells and the state entered into a mutual release and covenant not to sue and the state agreed to provide funding for two replacement water wells offered to the McDowells earlier as part of the Underground Storage Tank Assistance program grant to the Cooks.

Legislative Matters. Two friendly legislator bills drafted by Senior AAG Breck Tostevin were enacted by the Legislature.

HB 269. The first bill, HB 269 sponsored by Rep. Ramras, involves contribution rights under AS 46.03.822, Alaska's strict liability law for the release of hazardous substances. HB 269 removes uncertainty caused by the United States Supreme Court's December 2004 decision in *Cooper Industries v. Aviall Services*, 127 S.Ct. 577 (2004) concerning the timing of contribution rights.

HB 269 affirms existing Alaska law by allowing a contribution action "after the issuance of a potential liability determination" by DEC. The changes made by the bill apply to liability for the release or threatened release of a hazardous substance both that occurred (1) before the effective date of this Act where there has not been a final judgment, and (2) on or after the effective date of the Act. Governor

Murkowski signed the bill into law on April 26, 2006.

HB 419. The second bill, HB 419 sponsored by Rep. Coghill, repeals the Board of Storage Tank Assistance, the underground storage tank revolving loan fund, and the tank cleanup loan program. Since the repeal of the grant program, DEC has not received any loan application and the board had not met in a number of years.

HB 380. The legislature also passed HB 380 which updated and consolidated statutory authorities for the state veterinarian and relating to animals and animal and agricultural products. This bill updates obsolete and limited statutes, many of which were adopted in the 1940's, and will provide DEC and the state veterinarian with helpful authorities for dealing with animals and animal products in the state. AAG Elise Hsieh assisted DEC with this legislative project.

HB 392. HB 392, an act authorizing the establishment of regional solid waste management authorities, was sponsored by Rep. Peggy Wilson, received nearly unanimous support by the legislature, and was signed into law by the governor on May 12, 2006.

In light of expensive out-of-state waste disposal rates, the bill is designed to enable Alaska communities, particularly smaller, more remote communities to independently or jointly act to implement waste management transport systems and disposal sites to handle local wastes at reduced costs

and in an environmentally safe manner.

The bill received broad bipartisan support during the 2006 session. AAG Ruth Hamilton Heese, Law's lead on the bill, assisted DEC in various committee reviews involving environmental issues on the bill. AAGs Randy Ruaro, Rob Royce, Mary Ellen Beardsley, Mike Barnhill and Margie Vandor also provided assistance on review of other matters relating to the bill, such as public utility regulation, bond issuance, and municipal authority issues.

Human Services

Medicaid

Aid to Agency. The section continues to work on a number of issues related to the Medicaid program, most pressing are completing the development of the audit process required by AS 47.07.200 and working with the DHSS on implementing quality assurance/program integrity programs.

Subrogation/Liens. AAG Tim Twomey has 523 open Medicaid lien/subrogation files where the state is seeking to recover some portion of Medicaid expenditures from insurers or other third-party payors who may be liable for causing the need for medical services. 49 new lien matters were opened in May. A total of 44 files were closed, with or without payment.

During the month of May, AAG Twomey resolved 25 matters and collected a total of \$76,267.18. There are three additional matters resolved with expected recoveries in the amount of \$110,203.32. For calendar year 2006, a total of \$898,421.30 has been collected.

During May, AAG Twomey has increased his efforts with investigation of potential third-party recovery in matters where the state has received an initial notice that indicates the possibility of third-party recovery. He was also engaged in a variety of discussions concerning the Medicaid lien/recovery process. On May 16th, he presented an overview of this office's role and responded to questions at an Alaska Bar Association torts law section meeting. It appears that the relationship between this office, the bar and insurance community is improving as awareness of our role and responsibilities increases. There is a heightened awareness of this area due to the recent *Ahlborn* case from the U.S. Supreme Court.

The *Ahlborn* case was decided on May 1st. The U.S. Supreme Court has now interpreted the federal "anti-lien" provision as restricting a state's ability to assert and enforce a lien against Medicaid recipient recoveries that are characterized as something other than compensation for past medical damages. The full implications of this case are not yet known, but one implication is that Medicaid recipients and their counsel now have an

incentive to characterize settlement funds so as to legally avoid the state's lien. The state may be required to involve itself as a party to ongoing litigation so as to avoid prejudice or it may be necessary to initiate post-settlement litigation to obtain a court determination of the scope of lien rights. We have not yet observed how other states are responding to *Ahlborn*.

Licensing

AAG Rebecca Polizzotto has started the transition to being a full-time licensing attorney for DHSS. She is now advising both foster care licensing and assisted living licensing. In the coming month, she will start work on day care.

AAG Polizzotto has worked on four foster care license revocations. A fifth revocation is currently being reviewed for possible action.

AAG Polizzotto is also working with licensing supervisory personnel to develop a training schedule on AS 47.32 and the new regulations adopted under the chapter. Additionally, she will work with DHSS in developing a policy and procedure book for use by all licensing divisions.

[Labor and State Affairs](#)

Alaska Public Offices Commission

Alaska Right to Life Committee v. Brooke Miles, et al. On May 1, the Ninth Circuit Court of Appeals denied the motion to reconsider its April 5 denial of en banc rehearing of the

decision in this case (upholding limits on election contributions by nonprofit corporations). AAG Mike Mitchell handled the case.

Education

Bickford v. State. On May 10, AAG Neil Slotnick defended this appeal before the Alaska Supreme Court concerning how to initiate a special education complaint investigation.

Elections

NWCA v. State. On May 10 AAG Sarah Felix defended a challenge to placing on the ballot an initiative proposing additional regulation of cruiseships. The following day the Alaska Supreme Court faxed a decision in the state's favor affirming the decision of the superior court denying the challenge and ordering the placement of the cruiseship initiative on the primary election ballot. A written decision will follow at a later date.

Office of Rate Review

ITMO Alaska Regional Hospital, Medicaid Rate Appeals for FY 1996 and FY 1997. AAGs Linda Kesterson and Susan Daniels, working with the staff of the Office of Rate Review, presented this case to Department of Health and Social Services Hearing Examiner Patricia Huna-Jines on May 2 through 9. The matter concluded with resolution by settlement or summary judgment on all issues that were ripe for evidentiary hearing.

This case is one of a series of pending Alaska Regional Hospital appeals of Medicaid rates for the hospital's 1991 through 2000 fiscal year. Two major issues in the FY 96 and 97 appeal — year-end conformance and reallocation of the Plaza building purchase price — are held in abeyance pending final resolution of those issues in the consolidated FY 1991 - 1994 appeal and the FY 1995 rate appeal.

Retirement & Benefits

Retired Public Employees of Alaska, Inc., RPEA v. Matiashowski.

Anchorage Superior Court Judge Rindner issued his decision in favor of the state defendants on April 27 in this challenge by a retiree organization to several modifications to the PERS and TRS retiree health plans in 1999 and 2000. AAGs Kathleen Strasbaugh and Anne Johnson, assisted by AA Terri Begley-Allen, tried the case in January of this year.

Judge Rindner rejected each of RPEA's claims, finding that the state "utilized solid statistical data drawn from actual experience," and that benefit advantages offset any disadvantages.

Based on this finding, Judge Rindner determined that the state's benefits modifications did not violate Article XII, section 7 of the Alaska Constitution, which prohibits diminishment of accrued retirement benefits. He further determined that the state did not breach any contractual right of the plaintiff class, and he rejected the plaintiffs' claims of age discrimination,

breach of statutory duty, and fiduciary duty. Both sides will bear their own costs and attorneys' fees.

Workers' Compensation

The Alaska Insurance Guaranty Association (AIGA) filed with the Workers' Compensation Appeals Commission a motion for extraordinary review of the interlocutory decision of the Workers' Compensation Board's decision denying AIGA's motion to be dismissed as a party to Edwin Simons' workers' compensation case. In addition the AIGA filed a motion to stay the Board's decision.

On May 15 AAG Larry McKinstry appeared on behalf of the Division of Workers' Compensation and Workers' Compensation Benefit Guaranty Fund, another party to the case, at the hearing before the Workers' Compensation Appeals Commission to address the motion for stay. The Commission denied the motion to stay. AAG Toby Steinberger successfully opposed the motion for extraordinary relief, resulting in AIGA remaining a party to Mr. Simons' claim for benefits.

Special thanks. To AAG Toby Steinberger for taking on extra duty representing the Workers' Compensation Benefit Guaranty Fund created in the 2005 legislative session's workers' compensation bill; to AAGs Linda Kesterson and Susan Daniels for their hard work and long hours on Alaska Regional Hospital's Medicaid rate appeals this month; to

the website committee, chaired by AAG Richard Postma, for its recommendations and report; to AAG Mike Barnhill for taking on additional work in the Aetna bid protest.

Legislation/Regulations

During May 2006, the Legislation and Regulations section spent an active month editing draft legislation and bill amendments for the 2006 legislative regular session and second special session. The section assigned legislation to assistant attorneys general for review. The section edited bill reviews for the 2006 legislative session.

The section also performed legal reviews of several regulations projects including (1) Board of Fisheries (Eastern Gulf of Alaska Area Commercial Rockfish fisheries); (2) Department of Health and Social Services, Department of Environmental Conservation, and State Board of Education and Early Development (health, safety, and sanitation requirements in facilities under Department of Health and Social Services oversight; child care assistance and grants; and child care facility licensure requirements); (3) Regulatory Commission of Alaska (methodology for regulatory charge calculation); (4) Division of Insurance (insurance holding companies; premium tax payments; and surplus line insurers and brokers); (5) Department of Environmental Conservation (food code and seafood processing requirements; fees for request to test for avian flu; dissolved oxygen water quality standards and

water quality analytical methods); (6) Department of Administration, Division of Motor Vehicles (driver licensing; vehicle title and registration; boat registration; and hearings); (7) Department of Labor and Workforce Development (labor standards and safety); (8) Department of Health and Social Services (facility licensure requirements for laboratories and long-term acute care hospitals; home and community-based waiver program); and (9) Department of Administration, Office of Administrative Hearings (procedures for centralized administrative hearings).

Natural Resources

Board of Agriculture and Conservation Meeting. AAG Sabrina Fernandez attended the May Board of Agriculture and Conservation meeting. The BAC has a new chairperson, Rhonda Boyles. She announced at the meeting that Matanuska Maid will have increased communication and a better working relationship with the BAC. The BAC holds all the outstanding Matanuska Maid shares.

State of Alaska, DNR, DOA v. Mat-Su Chapter of the Alaska Farm Bureau, Inc. As an update on the Alaska Grown logo dispute, the Mat-Su Chapter met recently and voted not to accept the state's proposal to restore the parties to the position they were in prior to the dispute. The Mat-Su Chapter also decided to discontinue the services of its second retained attorney. The answer to the state's complaint must be filed by the end of the month.

West Petersville No. 1 Timber Sale. A group of local landowners, comprised of several published Alaskan authors, a CEO of a major investment firm, and other notables, appealed the DNR Commissioner's decision to proceed with the West Petersville No. 1 Timber Sale, arguing that the planning was insufficient in various ways. They also requested a stay of the sale and that they be permitted to appeal at public expense. The stay and motions to proceed at public expense have been denied, and we are awaiting their next move. AAG Kevin Saxby represents the Department of Natural Resources in the matter.

Prince William Sound Salmon Management Plans to Remain in Effect. At its meeting December 1-6, 2005 in Valdez, the Alaska Board of Fisheries, adopted a new Prince William Sound Management and Salmon Enhancement Allocation Plan to resolve longstanding allocation disputes between commercial fisheries. The board also adopted an amendment to the Copper River King Salmon Management Plan to limit openings inside the Barrier Islands near the mouth of the Copper River during the first two weeks of the season and allow additional Chinook to escape the commercial fishery for the benefit of upriver users and conservation of early run stocks. On April 24, 2006, Cordova District Fishermen United, Gillnet Division, filed a Complaint and Motion for Expedited Consideration seeking a preliminary injunction against both plans.

AAG Steven Daugherty worked with the board and the department as well as numerous personal use, subsistence, and commercial user groups to oppose a preliminary injunction. The case was complicated by a failure of the board's recording equipment.

On May 12, Judge Stowers denied the motion, holding that plaintiffs had not made a clear showing of probable success on the merits and that other user groups, most notably upriver subsistence users and seine permit holders, would be irreparably harmed by an injunction.

May Was an Active Month for Federal Subsistence Issues. During the months of April and May, Senior AAG Lance Nelson and AAG Steven Daugherty assisted the Department of Fish and Game with preparation of six Requests for Reconsideration of decisions adopted by the Federal Subsistence Board at its January 2006 meeting.

The state is requesting reconsideration of numerous customary and traditional use determinations which were adopted in violation of the board's regulations for establishing customary and traditional use determinations.

The state is also requesting reconsideration of other arbitrary and capricious actions of the board including a decision to continue to provide a subsistence preference for trout and steelhead on the Juneau road system and a decision to increase a federal sockeye harvest limit at

Pillar's Bay while maintaining a closure to non-federally qualified users.

The state also filed a Complaint against the Federal Subsistence Board over a Customary and Traditional use determination made by the board in 2005. The board made a customary and traditional use determination for moose for residents of Chistochina in all of Unit 12 (10,000 sq. miles) despite evidence of current use of only a very small portion of the unit (206 sq. miles) and despite historical evidence of use in only a quarter of the Unit. The Federal Board asserts that it can find customary and traditional use for an entire unit if there customary and traditional use documented in any portion of the unit.

The state filed a Request for Reconsideration, and after that request was denied filed a complaint seeking to overturn the board's actions and require the board to limit its customary and traditional use determinations to areas where there is evidence of customary and traditional use. AAG Steven Daugherty is assisting the Department of Fish and Game in this matter.

Oil, Gas and Mining

Preparations Continue for Rate Proceeding Before the FERC. In a proceeding before the Federal Energy Regulatory Commission (FERC), the state has challenged the TAPS owners' 2005 and 2006 interstate rates to ship oil from Pump Station 1 to Valdez. The state argues that the rates are

discriminatorily high, as they are close to double the rates charged to ship oil to Valdez in intrastate transportation. The TAPS owners also claim that the difference constitutes discrimination, but claims that the intrastate rates – set by the Regulatory Commission of Alaska – are too low. Producer and shipper Anadarko has also protested the owners' interstate rates. A four-week hearing is scheduled for November. If the state prevails, state revenues will increase due to increased royalties and production taxes.

In rate proceedings, the direct testimony of experts is prefiled in written form, and the hearing consists of cross-examination. In April, the state filed supplemental direct testimony and exhibits. Answering testimony is due in May. Discovery is also ongoing, and depositions are being set for June. AAGs Phil Reeves and Jan Levy are working with the state's outside counsel to prepare for the hearing.

Superior Court Dismisses AGPA lawsuit against DNR. On May 12, 2006, the superior court granted DOL's motion to dismiss the lawsuit filed by the Alaska Gasline Port Authority against the state, DNR Commissioner, and DNR Director of Oil and Gas. The AGPA had requested the court to (1) issue a Declaratory Judgment stating that DNR had breached its management obligations with regard to the Point Thomson Unit, (2) enjoin the state from taking further action to approve producer requests at PTU, and (3)

require DNR to give the AGPA a public hearing.

DOL moved to dismiss the case for failure to state a claim, asserting that the AGPA had not made out a case or controversy sufficient to warrant a declaratory judgment or met the requirements for equitable relief, and plaintiff's suit ignored the fact that last fall DNR put the PTU in default for failure to commit to production.

The court held that the AGPA failed to state a case or controversy sufficient to support a declaration that DNR had breached its obligation to properly manage the PTU.

Regarding injunctive relief, the court held that the AGPA failed to make a substantial showing on the merits. The AGPA did not show that it had an actionable claim; even if the court were to grant the equitable relief requested, such relief would not give the AGPA access to the gas it sought.

On the request that DNR be ordered to hold a hearing for the AGPA, the court recognized that the AGPA filed an appeal with DNR that is still pending and that DNR gave the Port until May 31, 2006 to file an appeal to the commissioner. Since there is a pending administrative appeal, the Port could request a hearing there.

Senior AAG Richard Todd and AAG Jon Iversen represented the state in this matter.

Opinions, Appeals and Ethics

Ethics

Judy Bockmon has begun the process of assuming responsibility for ethics matters. Once the transition is complete, Judy will serve as the ethics attorney and as the Department of Law's designated ethics supervisor.

For ethics matters, most of the work the section does and advice given is confidential by law. However, it can be reported that the section drafted, for the Department of Transportation and Public Facilities, a notice and a form for the department to use with its requests for proposals. The notice requires former state employees who have recently left state employment to certify their eligibility under the Ethics Act to work on the project being advertised. The form is for the former state employees to use in certifying their eligibility.

It can also be reported — because the settlement stipulation provides that it is public — that an ethics complaint against a state employee was settled. The employee admitted violating the Ethics Act by using state equipment to place personal long-distance calls and to send personal text messages that either caused the state to incur charges or relieved him of paying the usual charges. He also admitted failing to file a complete and timely disclosure of his outside employment. Under the settlement, the employee paid the charges for his personal calls, an equal amount as a penalty, and an

additional penalty of \$500, for a total of nearly \$1,400.

Appeals

Briefs. AG Megan Webb filed a brief on behalf of the State, OCS, in *L.H. v. State*. This case involves six children whose mother repeatedly chose her boyfriend over them, allowing that relationship to place the children at serious risk of physical and mental harm.

The mother and boyfriend routinely engaged in domestic violence in front of the children, which resulted in competing petitions for protective orders and the involvement of OCS and the police in the family's life. Despite referrals by OCS, the court system, and the Cook Inlet Tribal Council to remedial services, the mother and boyfriend continued their violent conduct. The mother continued this relationship even after her daughter reported that the boyfriend had sexually abused her. Based on the mother's conduct and the risk it posed to her children, the trial court terminated her parental rights to the six children.

On appeal, the mother challenged the trial court's active efforts finding and the trial court's denial of her motion to continue the termination of parental rights trial. The state asserted that there was more than sufficient evidence to support the active efforts findings and that the trial court did not abuse its discretion in proceeding with the trial as scheduled since a delay

would substantially prejudice the children.

Oral Arguments. AAG Mary Lundquist completed briefing and oral argument in *P.A. v. State*, a child-in-need-of-aid (CINA) appeal. This case involved two children of a quadriplegic father, and a mother with an ongoing substance abuse problem. The state initially took the children into custody when the mother was arrested for child neglect after she (while intoxicated) drove the children to the hospital where her husband was a patient. Throughout the adjudication, the mother continued to have substance abuse problems and did not follow through with treatment until the last month of the adjudication hearing. The father appealed the CINA adjudication, arguing that a finding that his children were CINA based solely on the mother's conduct violated his substantive due process right to parent.

Following oral argument, the court ordered supplemental briefing regarding the law in other jurisdictions, the extent of the state's duty to assist a fit parent in protecting children who are CINA from an unfit parent, and whether the adjudication findings were adequate for purposes of review.

AAG Mike Hotchkin presented oral argument in *G.M. v. State*, OCS, an Indian Child Welfare Act/child-in-need-of-aid appeal. The issues on appeal included whether a child's former Indian custodian has standing to appeal a court order terminating the

parental rights of the child's parent when the parent has chosen not to seek appellate review, and whether a trial court may terminate an Indian parent's parental rights without first hearing expert testimony about the tribe's cultural childrearing practices.

Decisions. The Alaska Supreme Court issued a decision in *Winston J. v. State*, OCS, — P.3d —, WL 1119017 (Alaska 2006). In this decision, the court affirmed the superior court's termination of the parental rights of a father. The case involved twin children born while their father, Winston J., was incarcerated for assaulting the twins' mother.

In his appeal, Winston argued that the Office of Children's Services failed to make reasonable efforts to prevent the breakup of his family. The court rejected this claim in part because of Winston's failure to make himself available for offered services.

Winston also claimed that the superior court should not have considered his domestic violence against the children's mother prior to their birth when determining whether they were children in need of aid. The court rejected this argument, finding that "when young children are involved, it is important that a parent with a history of violent behavior – particularly one as long and serious as Winston's – address the causes of the behavior."

The court declined to resolve the question of whether, in non-Indian cases, the state must make

reasonable efforts to reunify children with an identified putative father (who is not named on the birth certificate) before paternity is established. AAG Dan Branch briefed and argued the appeal.

The supreme court also issued a decision in *Walter J. v. State, DHSS*, OCS (MO&J No.1248; Alaska, May 24, 2006), reversing the termination of parental rights of a father to his son and remanding for further proceedings. The trial court had terminated a father's parental rights to his child, finding that the child was in need of aid based on the mother's conduct.

The trial court further found that the father had not remedied this conduct because it was not his conduct to correct. The trial court then noted that the father was not in a position to care for the child because he lacked a stable residence, missed most of his telephonic visits with the child (the father lives in a different state), had an attenuated relationship with the child, and did not understand the child's special needs.

The supreme court reversed, rejecting the state's argument that the record contained sufficient evidence for the supreme court to conclude that the child was in need of aid based on the father's conduct. The court noted that the trial court should make that determination, and it declined to substitute its own judgment under the circumstances. AAG Megan Webb handled this appeal.

In *Marty A. v. State, DHSS, OCS* (MO&J No.1249; Alaska, May 31, 2006), the supreme court affirmed the termination of a father's parental rights to his daughter. The trial court had found that the father failed to remedy his conduct (alcohol abuse, domestic violence) or the conditions in the home that placed the child at risk. The father argued that this finding was erroneous since he had completed an alcohol abuse treatment program in 2004 while incarcerated, he had been sober from 1983 to 1995, he was relocating from the village to Bethel, which has better sober support systems, and expert testimony suggested he had a "fairly good" chance of permanent recovery.

The supreme court rejected the father's arguments, noting that the father had a history of relapsing after treatment and that he and the mother had a history of domestic violence when intoxicated. The father's history of failed attempts to remain sober was evidence that he remained at high risk for relapse. The court also noted that the trial court may rely on a long history of substance abuse in determining whether a parent has remedied their conduct.

Other Litigation. The state moved to intervene in *Alaska Dental Society et al. v. Alaska Native Tribal Health Consortium* (D. Alaska, # 3:06-cv-00039). The plaintiffs—Alaska Dental Society, the American Dental Association, and several individual dentists—filed this case in state court against the Alaska Native Tribal Health

Consortium and several unnamed Dental Health Aide Therapists (DHATs).

DHATs are trained and certified under federal law to perform certain dental procedures in Native health clinics. These include procedures that, under state law, may only be performed by licensed dentists. In 2005, the Alaska Attorney General's Office released an informal opinion that concluded that federal law preempts state dental licensure statutes, "as applied to certified dental health aides while they are providing treatment to eligible patients through Native health clinics operating under the federal Community Health Aide Program, so long as the program's purported reach remains within the contours of congressional intent."

The dentists and dental associations filed suit against the Consortium and the DHATs, seeking a declaration that their activities violated state law, and seeking an injunction ordering them to cease the allegedly illegal activities.

The defendants removed the case to federal court and moved to dismiss it based on the plaintiffs' lack of standing. The plaintiffs opposed the motion, contending in part that they possess a private cause of action to enforce state dental licensure laws.

The state has now moved to intervene in the case as a defendant, and has lodged a motion to deny the plaintiffs' standing based on an implied private right of action to enforce state occupational licensing laws. AAGs Paul

Lyle and Mike Hotchkin represent the state.

Regulatory Affairs & Public Advocacy (RAPA)

Stipulated Settlement

U-05-45, Kake Tribal Corporation.

Kake filed a rate case in which it proposed a 55% rate increase to its electric customers in Southeast, at the same time proposing a special contract with its affiliate, Pelican Seafoods, to reduce its rates by 69%. RAPA's prefiled testimony (of Janet Fairchild) found the utility's proposed special contract unwarranted and the proposed rate increase unjustifiable. As a result, the parties entered into a stipulated settlement which was filed for RCA approval on May 12, 2006. The scheduled hearing was cancelled.

The settlement terms include an 11% rate increase across the board (as opposed to the proposed, selective 55% increase), with no special contract for the utility's affiliate. The utility has also agreed to adhere to dividend restrictions, to begin making COPA (cost of power adjustment) filings and to apply for PCE (power cost equalization) assistance, and to file a new revenue requirement for Commission review in 2008.

Pre-filed Testimony

U-06-02, Enstar/Marathon gas sales contract testimony. This proceeding will determine the contract price for

proposed gas sales by Marathon Oil Co. to Enstar Natural Gas Co. from Marathon's proven reserves in the Cook Inlet, beginning in 2009. RAPA filed the direct testimony of its expert (Arlon Tussing) on May 5, 2006.

RAPA pre-filed testimony takes issue with the proposed use of the Henry Hub Futures Index (HHI) to set Cook Inlet gas prices under the contract because there is no valid reason to link this gas sales contract to HHI, a premium price proxy for market value related to a gas pipeline crossroads in Louisiana.

Further, RAPA proposes a pricing alternative based upon a market basket approach that uses selected gas hub prices at five West Coast and western Canada locations to yield a median price. This composite approach, referenced as the "Cook Inlet Composite Index" (CICI), offers the same liquidity and transparency as the HHI but less volatility. Moreover, actual prices from the proposed CICI gas hubs have been consistently lower than HHI (the differential ranges from 7 to 15%) over the past 30 months.

The RCA hearing is scheduled to begin on July 6th.

New Case

U-06-46, Enstar service line extension.

The RCA opened a docket of investigation into whether Enstar correctly implemented a Commission-approved fee increase for new installation of service line facilities,

effective 4/21/06. The Anchorage Home Builders Association previously petitioned for reconsideration of the implementation date of the fee increase, asking that it be delayed to 1/1/07. At RCA invitation, the AG/RAPA elected to participate and filed an appearance in the matter on May 19th. A procedural schedule has not yet been set.

Public Advocate Advisory

U-05-45, Enstar credit card billing practice. A Public Advocate Advisory was released by DOL through Mark Morones on May 19th regarding the RCA's approval of a settlement recently negotiated by RAPA: "Attorney General Negotiates Settlement That Enstar's Outsourcing of Collection and Billing Practices to Remain Subject to RCA Oversight." As a result of the settlement, the RCA will have the right to review the reasonableness of any proposed fee increase to ratepayers who use a credit card to pay their gas bills, and the utility must submit any proposed new contract for third party credit/debit card payment services to the RCA for approval.

RAPA Intervention Summary Update

As of May 22, 2006, RAPA is involved in nineteen dockets before the RCA. That number includes seventeen adjudicatory matters in which the attorney general/public advocate has elected to participate as a party and two rulemaking proceedings in which RAPA has offered formal comments.

Torts and Workers' Compensation

Workers Compensation Decision. AAG Patti Shake represented the State of Alaska, Department of Transportation in a workers' compensation case that went to hearing on April 27, 2006. The employee claimed he suffered a low back injury at work in October 2001 and thus was entitled to permanent total disability benefits, permanent partial impairment benefits, medical costs, transportation expenses, penalties, interest and attorney's fees.

The employee waited more than two months to report the alleged low back injury to his supervisor. In addition, the employee had been receiving medical treatment for low back pain in the years, months and weeks leading up to the alleged industrial low back injury. He also failed to mention the alleged low back injury while seeking medical treatment for an ankle injury in the weeks following the alleged injury.

The state denied the employee's entitlement to benefits on the grounds he did not suffer a work related injury and his low back problems resulted from preexisting degenerative disc disease. The state asserted the employee was not entitled to the presumption of compensability since he failed to timely notify the state of the alleged low back injury.

The Alaska Workers' Compensation Board ruled in favor of the state denying and dismissing the employee's

claims. They found that the employee did not enjoy the presumption of compensability and was unable to prove compensability of his low back condition by a preponderance of the evidence.

Summary Judgment Granted in §1983 case. Judge Beistline granted summary judgment based on qualified immunity to an Alaska State Trooper, and a Fairbanks Police Officer who was working with him in the Statewide Drug Enforcement Unit, in a Sec. 1983 case arising out of a drug bust in Fairbanks. Following his conviction on the drug charges, the criminal defendant/plaintiff appealed and the Alaska Court of Appeals reversed the conviction, holding that the search and seizure violated the Alaska Constitution.

The criminal defendant/plaintiff then sued the officers and moved for summary judgment based on what he thought was an in-hand ruling in his favor. But qualified immunity looks at the "reasonableness" of the mistake and protects all but the plainly incompetent and those who knowingly violate the law.

Judge Beistline found that the mistake was reasonable; his ruling was at least in part because Judge Greene made the same mistake at the suppression hearing after seeing witnesses, reading briefs and hearing oral argument. AAG Venable Vermont, Jr. represented the officers for us.

Transportation

Pacific Plumbing Supply Company decision. The Office of Administrative Hearings issued a procurement decision largely favorable to the Department of Fish and Game. Pacific Plumbing Supply provided six boilers to the Fort Richardson Fish Hatchery. When the boilers malfunctioned, the Department of Fish and Game withheld payment and demanded restitution of all its expenses.

The Hearing Officer determined that under a lemon clause in the contract, the department was entitled to either (1) an identical replacement system upon payment to Pacific Plumbing of the remainder of the contract purchase price, or (2) the return of the money it had paid to Pacific Plumbing. The Hearing Officer rejected the Department of Fish and Game's other contract and warranty claims. The Department of Fish and Game has lodged an appeal of the rejected claims with the superior court. Former transportation section AAG Larry McKinstry handled this matter for the Department of Fish and Game.

Gourmet Ventures case ordered to new trial. Earlier this year the Department of Transportation and Public Facilities prevailed in a condemnation case when a jury awarded a landowner an amount virtually identical to the amount awarded to the landowner by a special master in a prior proceeding. This month, Judge McKay granted the landowner's motion for a new trial,

largely due to potential jury confusion over the wording of a special verdict form. AAGs Gary Gantz and Susan Urig continue to represent the Department of Transportation and Public Facilities.

ACI-NA Legal Seminar successful.

AAGs John Steiner and the Ted Stevens Anchorage International Airport hosted approximately 110 airports lawyers and FAA officials at a seminar in Anchorage presented by the Airports Council International – North America Legal Committee. John Steiner helped arrange for this seminar to be held in Anchorage when he was chair of the ACI-NA Legal Committee. The seminar was educationally successful, and also featured a beautiful evening train ride down Turnagain Arm sponsored by the Ted Stevens Anchorage International Airport and the Alaska Railroad Corporation.

Antitrust seminar held for procurement professionals. The Department of Transportation and Public Facilities hosted a presentation by the U.S. Department of Justice Antitrust Division for procurement professionals on detecting and preventing antitrust violations. The presentation was attended by approximately 35 procurement officers and lawyers from state and federal agencies. AAG Leone Hatch and the AG's special assistant Vanessa Tondini helped arrange for the presentation to be delivered in Alaska.

CRIMINAL DIVISION

Anchorage DAO

Ernie Jensen, three-time felon, convicted of passing forged check two hours after check was stolen. On May 31, 2005 at approximately 9:00 a.m. Glenn Roberts reported to APD that his truck had just been stolen from a construction work site. He had left his truck with the keys in the ignition while he was working inside. A lady had come in to tell him his truck had just been stolen.

Approximately two hours later at 10:50 a.m., APD responded to Cash Alaska on a report of the forged check being passed by Ernie Jensen. Police arrived at the store and saw Roberts' stolen truck in the parking lot. The truck drove off and eluded police, running a stop sign and speeding over 60 mph. APD broke off the pursuit for safety reasons and returned to Cash Alaska. Jensen was just exiting the store at that time after presenting a check in the amount of \$300 drawn on Robert's business account payable to Jensen. The store employees confirmed that it was Jensen who had passed the check.

A jury convicted Jensen of forgery in the second degree. Jensen had prior felony convictions for burglary, sexual assault in the second degree and escape.

ADA Kelly Cavanaugh, in his last trial for the District Attorney's Office before

leaving for private practice, tried the case for the prosecution.

Felony DUI driver claims "some other dude did it," but mistakenly picks a "dude" who was in Peru at the time.

On January 16, 2004, two vehicles collided near the intersection of the New Seward Highway and Dimond Boulevard. An Anchorage police officer arrived in time to see Michael Rockwell get out of the driver's side of one of the two vehicles and walk toward the other vehicle, yelling at the other driver. The officer asked Rockwell if he was the driver and if he was okay. Rockwell said, "Yes," he was the driver and was okay. But Rockwell very quickly changed his story, saying that another man had been driving and that other man had run away. Rockwell, who had three prior convictions for DUI, said he was too drunk to drive and had arranged for that other man to drive. Rockwell's blood alcohol was .13. Rockwell named the other man, Josh Fagg.

By the time of trial, the state had found Josh Fagg and he testified at the trial. He said he had been traveling in Ecuador and Peru as of January 16, 2004, and produced a U.S. passport, an Ecuadorian entry car, and a bus ticket to corroborate his testimony.

An Anchorage jury convicted Rockwell of felony DUI. ADA Kat Runnels tried the case for the state.

Ralph McGiboney convicted of felony assault in road-rage case. On October 14, 2005, Ralph McGiboney was

driving into Anchorage on the Glenn Highway near Birchwood. Traveling at 70 mph, McGiboney took offense at a truck pulling a trailer traveling more slowly. Initially, McGiboney followed the truck, flashing his lights at the truck from behind. Then he passed the truck and threw a camera out of the window of his vehicle at the driver of the truck as he passed. McGiboney pulled in front of the truck and hit his brakes. The truck had to take evasive action to avoid hitting him. McGiboney forced the truck onto the shoulder of the road. McGiboney got out to approach the truck driver, but the truck driver simply drove off. McGiboney tried it a second time, again forcing the truck driver off the road. This time he got out with a claw hammer in his hand and walked to the truck driver's door. But again the truck driver drove off.

Responding to 911 calls from several drivers who witnessed the events, APD located and arrested McGiboney. He admitted pulling over in front of the truck, saying he thought the truck driver would handle things like a man. He said he had grabbed a claw hammer as he got out of his vehicle just in case the victim had a gun. But he admitted that he had never seen the victim with a gun,

An Anchorage jury before Judge John Suddock convicted McGiboney of assault in the third degree for placing the truck driver in fear of serious physical injury, criminal mischief for damage he caused to the victim's truck, and reckless driving. ADA

Gustav Olson tried the case for the state.

Jury acquits angry gas station customer with a gun of felony but convicts of misdemeanor. On May 16, 2005, Jason Cutter went into a Holiday gas station located at Boniface Parkway and Northern Lights Boulevard. He told the two female clerks on duty that he had left his I.D. card in the store earlier and wanted it back. When they said they did not know anything about it, they asked him to describe the clerk on duty at the time. Cutter's description did not match anyone they knew as a person working earlier in the day.

Cutter asked one of the clerks if she heard about "what happened the other day," referring to the murder of a man earlier in the week in the neighborhood, and asked her if she wanted to be next. Cutter then went outside to his car and retrieved a gun. The clerks saw him coming, ran to the back of the store, and locked themselves in the bathroom. They both reported that they thought he might shoot through the door and they were afraid they were going to die.

There was a customer in the store, too. The customer said Cutter "went ballistic," saying "That's it. You are going to f@*#ing die." He saw Cutter return carrying a semi-automatic handgun and then leave.

Police found Cutter at his residence hiding in his basement. At first, he denied being at the Holiday store, but

later admitted it. But the officers who searched his residence did not find the handgun, but only a box of ammunition.

The trial jury acquitted Cutter of assault in the third degree, but convicted of assault in the fourth degree.

Judge Michael Wolverton tried the case and sentenced Cutter to 120 days to serve on the misdemeanor assault. ADA Dan Shorey tried the case for the state.

Jerry Taylor convicted of felony eluding a police officer, while running from domestic assault he had just committed. On September 22, 2005, an Anchorage police officer was driving home on the Seward Highway when Jerry Taylor passed him driving 90 to 100 miles per hour. The officer stopped him. Taylor explained that he had just gotten a call that “his baby was sick” and was going home to help.

The officer offered to send an ambulance to the house. Taylor said, “He is not that sick.” He said, “Please, officer, just let me go.” The officer asked him to wait while he ran a computer check on Taylor and his car.

As the officer walked back to his vehicle, Taylor took off. He again reached speeds of up to 100 miles per hour as he fled south on the Seward Highway. He exited at the O’Malley intersection, running a red light at that exit. The officer broke off pursuit. After the officer broke off pursuit, he

overheard radio transmissions that Taylor’s wife had just reported to police that Taylor had gotten in an argument with her, had pulled a gun, had pointed the gun at her, and had left the area in the car the officer had stopped.

While the evidence that Taylor was fleeing after having pointed a gun at his wife was not admitted at trial, the jury convicted Taylor of felony eluding a police officer. ADA Rob Henderson tried the case before Judge John Suddock.

Taylor, who has at least three prior felony convictions, faces a presumptive sentence in the three-to-five year range at his sentencing, currently set for September 28, 2006.

[Fairbanks DAO](#)

May was an interesting month. No crimes occurred in the immediate vicinity of the office this month. However, there was one attempted murder-robbery that occurred at a crack house three blocks from the office. A 17-year-old and her 23-year-old male accomplice decided to use a pistol and shotgun in order to seek the return of money lost when illicit drugs that were purchased were not of the quality the consumer had wished.

The 17-year-old held a handgun to the victim’s head when the victim and the male accomplice were struggling for a 12 ga. shotgun. The accomplice had fired the shotgun through a door and luckily only damaged the door and a dresser. During the struggle over the

shotgun, the victim was able to deflect the barrel as it went off. He avoided injury. The victim called 911 once he saw the defendants enter the residence, and he left the cell phone on. The incident was recorded by the 911 operator.

The grand jury returned 49 indictments during May. One of the indictments was for murder in the first degree. The key witness failed to appear for grand jury, which necessitated a preliminary hearing to have the defendant held until the case could get to grand jury.

New referrals to the felony unit included 12 new drugs cases, three robbery cases, 14 property crime felonies, 10 felony assaults, one attempted murder, three miscellaneous felonies and only four felony DUIs.

ADAs Jason Gazewood and Jason Weiner managed to resolve a number of burglaries, thefts and other assorted felonies involving frequent flyer Bernard Steadman. His composite sentence will remove him from the streets for 12.5 years.

The misdemeanor unit actually got a little break in May. DUI referrals were down to 69 for the month. The unit received 38 driving while license is suspended/revoked/cancelled cases and 39 new assault cases. The remaining 70 new cases were comprised of miscellaneous misdemeanors, drug cases, property crimes and weapons offenses.

The misdemeanor unit was happy to greet our summer interns, Amy Colletta and Matt Talerico. Amy and Matt jumped right in and started covering district court arraignments.

[Kenai DAO](#)

The highlight of this month is ADA Scot Leader's obtaining a conviction on a serial murderer. And to make this even more special, the conviction was for a murder that happened 21 years ago. This was the first trial for AST's Cold Case Unit, and they did a great job on the investigation, and Scot did a great job on the trial. Once the defendant is sentenced here, he will be shipped to Kansas where he will be tried on another murder; and Kansas has the death penalty.

There was some terrific "CSI"-type evidence: the defendant's fingerprint found on a newspaper in the victim's home from the date of the murder; another of his fingerprints found on a note in the victim's purse; his fingerprint found in a cash drawer at a robbery that occurred within a few weeks of the murder; and his identity being revealed thanks to his being fingerprinted for a job as a bus driver. Then there was a bullet that matched the murder to another robbery that occurred within a few weeks.

It was a great verdict, and the jury came back in only a few hours.

As for the rest of the month, DUIs seem to be prevalent. The office received ten felony DUIs in May as well as many

misdeemeanors. And of course there was Memorial Weekend with six DUIs in one night alone in the Anchor Point/Homer area.

Ketchikan DAO

A Ketchikan jury found Jillian Gallyer guilty of DUI and endangering the welfare of child in the first degree but not guilty of assault in the third degree. She was driving a car late at night with her two-year-old niece in the back seat when she drove off the road and crashed, breaking a telephone pole in half.

A blood test at the hospital an hour and half later showed a .273 BAC and a breathtest two hours later showed a .188 BAC. The defense to the assault charge was that the minor injuries on the niece could have come after the crash when she was going out of the car and through the bushes.

A Ketchikan jury found Jimmy Major not guilty of two counts of DV assault in the fourth degree for assaulting his sister. She was drunk and did not remember how she got the injuries although witnesses stated that only she and the defendant were in the room together both times when they heard her getting hit and he claimed she fell.

The grand jury was busy with felony DUIs indicting three people. Three people had been arrested for felony DUI in three days. John Nelson was indicted for assault in the 2nd degree for strangling his wife and beating her

so badly that she needed to be medivaced from Metlakatla to Ketchikan for medical treatment.

Two Thorne Bay men were charged with robbery in the first degree and theft in the second degree for assaulting a man near Thorne Bay, threatening him with a gun, and taking his wallet and money.

Others were indicted for criminal mischief in the third degree for punching out a window and felony failure to register as sex offender.

Kodiak DAO

A 43-year-old Kodiak man was convicted of felony DUI. He was sentenced to 24 months in jail with 20 months suspended, fined \$10,000, and placed on probation for five years. His conditions of probation include that he receive a substance abuse evaluation and complete any treatment recommended, and that he consume no alcohol at all during his term of probation. In addition his license to drive was revoked for life, and the car he was driving at the time of his violation was forfeited to the state.

A 38-year-old Bethel man was convicted of felony criminal mischief for having thrown a fire extinguisher through the side window of an automobile in an attempt to steal items inside. One of the items stolen was a cell phone. This defendant was discovered about two hours later when police were called to a local motel to assist with a man who had passed out

in the hallway. Upon arriving and finding that the man had a cell phone in his hand, the policeman called the stolen cell phone number and the cell phone the man was holding rang. In a subsequent search of his motel room, police recovered all of the stolen items. The defendant was sentenced to three years with two years suspended and placed on probation for four years.

A 22-year-old former employee of a local grocery store was convicted of felony theft after his supervisors noticed a pattern of fraudulent use of store gift cards. During the investigation the man admitted to stealing approximately \$16,000 by fraudulently accessing the gift cards, and he signed a promissory note for the stolen amount. At his sentencing he was given a suspended imposition of sentence, he was placed on probation for five years, sentenced to spend 45 days in jail, and ordered to pay restitution for the store's loss.

A 29-year-old Kodiak man was convicted of attempted sexual abuse of a minor in the second degree for touching his niece's breasts through her clothing, and attempting to put his hands down her pants, at a time when he believed her to be sleeping. The brave 12-year-old victim was able to fend off the intoxicated defendant, and push him out of her room, after which she locked herself in her room for the remainder of the night. The defendant was sentenced to five years with four years suspended, and placed on supervised probation for seven years. The defendant was ordered to totally

refrain from the use of alcohol during the term of his probation, as well as to undergo a mental health evaluation and complete any treatment recommended, including sex offender treatment.

Palmer DAO

Cynthia Estes was sentenced to serve 75 years on the charge of murder in the first degree and three years on the charge of burglary in the first degree. Estes was convicted by a jury in February of 2006 of planning and participating in the murder of David McKinney to obtain McKinney's prescription medications. On the night of the murder, Estes and her husband, Richard Deremer, drove to the victim's house equipped with walkie-talkies and a shotgun, and Deremer shot McKinney in the head. At trial, Estes' attorney, Rex Butler, argued that she did not intentionally participate in a murder and was a domestic violence victim. ADA Suzanne Powell tried this case.

Kathleen Colbert pled no contest to manslaughter for shooting her husband in the head during an argument at their home in Talkeetna in 2005. This case was handled by ADA Suzanne Powell as well.

Randy Carter was sentenced to serve six years, with three years suspended, and placed on probation for 10 years on a consolidated count of sexual abuse of a minor in the second degree. ADA Suzanne Powell was the prosecutor for the state.

After remand from the Court of Appeals, Jason Auer was sentenced to serve eight years on a single count of sexual abuse of a minor in the first degree. Judge Eric Smith determined that a least serious mitigator did not apply and the case should not go to a three-judge-panel.

Nathaniel Day was sentenced to eight years, with five suspended, on two counts of theft in the second degree by receiving. In Day's home, state troopers recovered property taken in multiple burglaries, including canoes, kayaks, sports gear, water skis, power tools and construction equipment. Lua Smith, Day's significant other, was convicted of misdemeanor theft in the same case. Judge Greg Heath ordered the couple to pay over \$50,000 in restitution to various victims for property that was not recovered. ADA Steve Wallace was the prosecutor on this case.

ADA Richard Payne obtained a conviction against Richard Green for misconduct involving weapons in the fourth degree.

Anthony Beech was convicted by a jury of driving while intoxicated. The case was handled by ADA Jarom Bangerter.

Billie Rae Deemer was convicted by a jury of misconduct involving weapons in the second degree; misconduct involving weapons in the third degree; misconduct involving a controlled substance in the third degree; misconduct involving a controlled substance in the fourth degree and

false information based on his possessing 33 grams of cocaine, a 9 mm handgun, digital scales, syringes, paper bindles, spoons, a butane torch and providing a false name to the trooper. Deemer had a previous conviction for selling cocaine, but the trial judge did not allow the jury to hear about that. The case was tried by ADA Curtis Martin.

Edward Butler was indicted on one count of sexual abuse of a minor in the first degree and three counts of sexual abuse of a minor in the second degree. The allegations are that Butler sexually abused three 11-year-old girls on separate occasions. Butler is currently serving a sentence for exposing himself to young girls in the same neighborhood. ADA Rachel Gernat is the prosecutor in this case.

Steven Knights was indicted on six counts of sexual abuse of a minor in the first degree, six counts of sexual abuse of a minor in the second degree, three counts of unlawful exploitation of a minor, possession of child pornography and distribution of child pornography. Knights is accused of sexually abusing his stepdaughter for a number of years, taking nude photographs of the victim and having numerous images and videos of child pornography on his computer. DA Roman Kalytiak is handling this case.

Edward Grey was indicted on charges of attempted murder in the first degree, assault in the second degree, assault in the third degree and misconduct involving a weapon in the

fourth degree for shooting his wife in the arm and holding a gun to her head. Grey's bail is set at \$75,000 cash plus a third party custodian. ADA Rachel Gernat is the prosecutor for this case.

Emily and Emmet Saunders were indicted on charges of robbery in the first degree, assault in the third degree, vehicle theft in the second degree and theft in the second degree. The couple asked the victim, a local restaurateur, for a ride, produced handguns and took her Lexus sport-utility vehicle and money. Emmet Saunders was employed by the victim in the past. The Saunders were arrested by the Anchorage Police Department at an Anchorage motel. The truck and money were recovered. DA Roman Kalytiak is the prosecutor for this case.

A Palmer grand jury indicted two Valley men, Brandon Dodd and Brian Shook, for armed robbery and misconduct involving controlled substances for their involvement in a January, 2006 robbery of the Susitna Professional Pharmacy on Bogard Road. The masked robbers forced entry through a rear entrance as employees were preparing to leave for the night. More than \$8000 in drugs were taken. ADA Steve Wallace is handling the case.

A Palmer grand jury indicted Luke Jackson on charges of manslaughter and felony assault. On August 3, 2005, Jackson was the driver of a car on that missed a corner on Trunk Road and fell approximately 75 feet down an embankment. Tom Gratto, one of the

occupants, died the following day. Jackson had a blood alcohol level of .180 over three hours after the crash. Jackson has a prior DUI conviction from 2003. ADA Richard Allen is the prosecutor for this case.

A total of 35 people were indicted on new felony charges by Palmer grand juries this month.

SAVE THE DATE

August 6-10 Conference of Western Attorneys General Summer Meeting - Anchorage

September 11-13 DA/Paralegal Conference – Girdwood

September 14 Criminal Division Supervisor's Meeting – Girdwood

September 18-19 Civil Division Supervisor's Retreat - Girdwood

IN MEMORY

The department fondly remembers Vaneé Marshall, a clerk in the Collections & Support Section, who passed away on April 29th.